

**REMARKS**

This Application has been reviewed in light of the final Office Action electronically sent May 9, 2007. Claims 1-24 are pending in this application and Claims 1, 2, 6, 9, 11-13, 17, 20 and 22-24 are rejected. Claims 3-5, 7, 8, 10, 14-16, 18, 19 and 21 are objected to. For at least the reasons provided below, Applicants respectfully request reconsideration and allowance of all pending Claims 1-24.

**Allowable Subject Matter**

Applicants note with appreciation the Examiner's indication that Claims 3-4, 7-8, 10, 14-15, 18-19 and 21 would be allowable if rewritten in independent form. However, as discussed below, Applicants respectfully believe that independent Claims 1 and 12, from which these claims depend, are in condition for allowance. Therefore, Claims 3-4, 7-8, 10, 14-15, 18-19 and 21 have not been rewritten in independent form.

**Claim Objections**

The Examiner objects to Claim 24 because of certain informalities. Applicants have amended this claim as suggested by the Examiner. Therefore, reconsideration and favorable action are requested.

**Section 103 Rejections**

The Office Action rejects Claims 1, 9, 12 and 20 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,088,920 issued to Krishnaswamy et al. ("*Krishnaswamy*") in view of U.S. Publication No. 2002/0101632 issued to Meckler ("*Meckler*").

Claim 1 of the present application, as amended, recites the following limitations:

A method for communicating optical traffic in a network comprising a plurality of network nodes, the method comprising:

receiving traffic to be added to the network at a network node, the network operable to communicate received traffic in an optical signal comprising a plurality of channels;

determining a data rate and one or more destination nodes of the received traffic;

assigning the received traffic to one or more particular channels of the plurality of channels of the optical signal based on the determined data rate and the one or more destination nodes;

configuring one or more of the network nodes to process the traffic contained in the assigned channels based on the data rate and the one or more destination nodes of the optical traffic; and

communicating the traffic through network in the assigned channels of the optical signal based on the determined data rate and the one or more destination nodes.

Independent Claim 12 recites similar, although not identical, limitations.

In order to establish a *prima facie* case of obviousness, three requirements must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge available to one skilled in the art, to modify a reference or combine multiple references; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or combination of references) must teach or suggest all of the claim limitations. M.P.E.P. § 2143. In the present case, a *prima facie* case of obviousness cannot be maintained because *Krishnaswamy* and *Meckler*, whether considered singly, in combination with one another, or in combination with information generally available to those of ordinary skill in the art at the time of the invention, fail to disclose all of the elements of the pending claims. Furthermore, there is also no motivation to combine the references in the manner suggested by the Examiner.

First, neither *Krishnaswamy* or *Meckler* discloses, teaches or suggests each and every limitation. For example, neither reference discloses, teaches or suggests “assigning the received traffic to one or more of the channels of the optical signal based on the determined data rate and the one or more destination nodes.” As pointed out by the Examiner, *Krishnaswamy* does not disclose assigning traffic to a channel of an optical signal based on a determined data rate. Instead, the Office Action relies on a disclosure in *Meckler* that information may be communicated by *different transmission systems or modes* based on the speed of the transmission. For example, voice calls may be communicated using an ordinary telephone network and streaming video may be communicated using a laser beam transmission system. Thus, *Meckler* discloses using entirely different communication

technologies to transmit traffic having different required speeds of transmission. It does not disclose assigning traffic to a particular channel of an optical signal based on a determined data rate.

Although the Final Office Action notes that *Meckler* does not disclose, teach or suggest assigning traffic to a particular channel of an optical signal based on a determined data rate, the Office Actions asserts *Meckler* discloses the use of data rate as one criterion used to determine a “transmission path” between two nodes. Therefore, the Office Action asserts that it would have been obvious to modify the teachings of *Krishnaswamy* to use data rate as a criterion for assignment of traffic to particular channel(s) of an optical signal. However, Applicants respectfully submit that there is no suggestion or motivation to do so. First, *Meckler* teaches away from such a modification since it teaches the use of *different transmission systems or modes* to transmit traffic having different required speeds of transmission. Therefore, one of skill in the art would not be motivated to use the teachings of *Meckler* to assign traffic of different data rates to the *same* transmission system (i.e., different channels of the same optical signal), and in fact would have been dissuaded to do so by the teachings of *Meckler*. Furthermore, *Krishnaswamy* discloses a specific algorithm to assign traffic to particular wavelengths (e.g., see Col. 4, line 51 – Col. 5, line 21) and there is no suggestion or teaching as to how or if such a specific algorithm could be modified to incorporate the data rate of the traffic.

For at least these reasons, Applicants respectfully submit that Claim 1 is in condition for allowance. Furthermore, Claim 12 is also allowable for analogous reasons. Therefore, Applicants respectfully request reconsideration and allowance of Claims 1 and 12, as well as those claims that depend from these independent claims.

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The Office Action also rejects Claims 6 and 17 under 35 U.S.C. §103(a) as being unpatentable over *Krishnaswamy* in view *Meckler* and further in view of U.S. Publication No. 2006/0153563 issued to Feuer et al. In addition, the Office Action rejects Claims 11 and 22 under 35 U.S.C. §103(a) as being unpatentable over *Krishnaswamy* in view *Meckler* and

further in view of U.S. Publication No. 2004/0252688 issued to May et al. It is unclear from the Final Office Action how and whether Claims 2 and 13 are rejected, but Applicants will assume that the Examiner's previous rejection of Claims 2 and 13 under 35 U.S.C. §103(a) as being unpatentable over *Krishnaswamy* in view *Meckler* and further in view of U.S. Patent No. 7,072,584 issued to Lichtman remains.

Although Applicants believe that these claims include limitations that are not disclosed in the cited references, Applicants submit that Claims 2, 6, 11, 13, 17 and 22 are at least allowable because they depend from one of independent Claims 1 or 12, which Applicants believe to be in condition for allowance for the reasons provided above. For at least this reason, Applicants respectfully request reconsideration and allowance of Claims 2, 6, 11, 13, 17 and 22.

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Finally, the Office Action rejects Claims 23-24 under 35 U.S.C. §103(a) as being unpatentable over *Krishnaswamy* in view *Meckler* and further in view of U.S. Publication No. 2006/0274734 issued to DeMartino ("*DeMartino*").

These claim require that optical traffic be communicated as one of optically-transmitted/electrically-selected/optically-dropped (OEO) traffic, point-to-multipoint traffic, or point-to-point traffic depending on the determined data rate. The Office Action asserts that *DeMartino* discloses traffic being communicated in each of these three manners. However, even assuming for the sake of argument that this is the case, *DeMartino* does not disclose communicating traffic as one of these three types of traffic *depending on the determined data rate* of the traffic (the determination of the data rate being recited in independent Claims 1 and 12). In this regard, the Office Action asserts that voice/telephony traffic and video traffic are transmitted in different manners (point-to-point versus point-to-multipoint/broadcast) and that these types of traffic have different data rates. Therefore, the Office Action concludes that "it can be said that depending on the data rate of an optical signal, it is transmitted as point-to-point or broadcast signal."

Applicants respectfully disagree with this conclusion. First, there is no disclosure or suggestion that the reason why video traffic is transmitted in a different manner than voice/telephony traffic is based on its data rate (after a determination of the data rate). Just because the data rates of the traffic may be different (which they are not necessarily, as discussed below), does not mean that the traffic was communicated in a certain way based on a determination of the data rate. Instead, it is the fact that the video traffic is being sent to multiple destinations and that the voice/telephony traffic is being sent to a single destination that determines the manner in which the traffic is communicated (point-to-point versus point-to-multipoint/broadcast).

Furthermore, the Examiner's assumption that the video traffic and the voice/telephony traffic described in *DeMartino* have different data rates appears to be incorrect. In association with Figure 7 and the related description (§s 50-53), *DeMartino* describes that each of  $\lambda_1$ - $\lambda_8$  (the point-to-point transmissions) carry a 2.5 Gb/s SONET signal and that  $\lambda_B$  carries a 2.5 Gb/s broadcast transmission. Therefore, *DeMartino* discloses communicating data having the exact same data rate using two different communication techniques. Again, Applicants thus respectfully submit that there is no disclosure in *DeMartino* of communicating traffic as one of optically-transmitted/electrically-selected/optically-dropped (OEO) traffic, point-to-multipoint traffic, or point-to-point traffic *depending on the determined data rate*. In fact, as noted above, it actually teaches away from such a concept by disclosing that traffic having the same data rate is communicated using two different communication techniques.

For at least these reasons (in addition to their dependence on independent Claims 1 and 12), Applicants respectfully submit that Claims 23 and 24 are in condition for allowance. Therefore, Applicants respectfully request reconsideration and allowance of Claims 23 and 24.

**CONCLUSION**

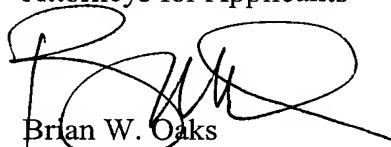
Applicants have made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicants respectfully request full allowance of all pending claims.

If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the Examiner is invited to contact Brian W. Oaks, Attorney for Applicants, at the Examiner's convenience at (214) 953-6986.

Although Applicants believe that no fees are due, the Commissioner is authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of BAKER BOTTS L.L.P.

Respectfully submitted,

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Date: July 6, 2007

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